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<PREAMB>

<AGENCY TYPE='S'>DEPARTMENT OF AGRICULTURE

<SUBAGY>Farm Service Agency

<CFR>7 CFR Parts 761 and 764

<RIN>RIN 0560-A117

<SUBJECT>Microloan Operating Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to modify Operating Loan (OL) application, eligibility, and security requirements for microloans (ML) that would serve the unique operating needs of very small family farm operations. The intended effect of this proposed rule is to make the OL Program more widely available and attractive to smaller operators through reduced application requirements, more timely application processing, and added flexibility in meeting the managerial ability eligibility requirement. This proposed rule also would remove provisions for the low documentation (Lo-Doc) application process for OLs from the existing direct loan regulations.

DATES: We will consider comments that we receive by **July 24, 2012**.

ADDRESSES: We invite you to submit comments on this rule and the new information collection request. In your comments, include the Regulation Identifier Number (RIN), and volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Director, Loan Making Division (LMD), FSA, USDA, 1400 Independence Avenue, SW, Stop 0522, Washington, DC 20250-0522.

Comments will be available for inspection online at www.regulations.gov and at the mail address listed above between 8 a.m. and 4:30 p.m., except holidays. A copy of this proposed rule is also available through the FSA home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT: Connie Holman; telephone: (202) 690-0756. Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION

<HD1>Background

FSA has a long history of providing agricultural credit to the Nation's farmers and ranchers through its OL Program. Throughout this rule, any reference to "farm" or "farmer" also includes "ranch" or "rancher," respectively; in this document, the word "operator" refers to farmers who operate a farm. FSA's OL Program is designed to finance the farm operating needs of family farms for operators who meet the program eligibility requirements. Among other things, eligible applicants must be unable to obtain sufficient credit from other sources; have sufficient applicable education, on-the-job training, or farming experience; have an acceptable credit history; and have adequate

collateral for the proposed loan. (See 7 CFR 764.101 and 764.252 for a full explanation of OL eligibility requirements.) OL funds may be used for such things as annual or term operating purposes to refinance certain debts; pay normal farm operating and family living expenses; purchase livestock, equipment, and other materials essential to a farm operation, and may also be used for some minor improvements to farm real estate, such as wells and essential repairs to buildings. (See 7 CFR 764.251 for a complete list of OL funds uses.) OL funds cannot be used to finance the purchase of real estate. The maximum loan amount for OLs is \$300,000, and repayment can be amortized up to 7 years depending on the specific loan purpose and expected useful life of the collateral. (See 7 CFR 761.8(a)(2) and 764.254(b)(1)(ii).) For example, an annual OL used to finance crop input costs such as seed, fertilizer, and chemicals, will generally be due in 1 year, while a term OL to finance equipment, livestock, or grape vines may be extended up to 7 years. As specified in 7 CFR 764.254(a)(3), the interest rate charged is the OL rate in effect at the time of loan approval or at the time of loan closing, whichever is lower. FSA's direct loan interest rates are adjusted as often as monthly and are available on the FSA website at: <http://www.fsa.usda.gov/daflp.rates.htm> and from any FSA office.

In on-going efforts to improve the OL Program, FSA evaluated the unique needs of small farm operations and identified unintended barriers to their applying for OLs, and is proposing to simplify the application process and add flexibility for meeting loan eligibility and security requirements to encourage their participation. FSA is proposing an ML process within the existing OL Program and using existing OL appropriations that would focus on the financing needs of small farm operations. These small farms,

including non-traditional farm operations, currently have limited financing options, as explained below.

With increased awareness among consumers regarding the sources, affordability, and quality of their food, and the wider occurrence of community supported agriculture (CSA) the small specialty producer has increasing opportunities to raise and sell locally. Additionally, low-income neighborhoods with high concentrations of people who are far from a grocery store and have limited access to healthy food choices. These areas (sometimes called “food deserts”) have gained attention and support from the USDA, the United States Department of the Treasury, the United States Department of Health and Human Services (HHS), and the Obama Administration’s Lets Move initiative, offering opportunities for niche-type urban farms to market directly to the city neighborhoods.

Operators of these types of small farms are not typically served by agricultural lenders, and may have difficulty obtaining financing from conventional commercial lenders. Consequently, these farmers often rely on credit cards or personal loans, which carry high interest rates and less flexible payment schedules, to finance their operations. Though their specialty produce may not be well known to ag-lending community at-large, there can be a viable market within cultural or ethnic communities.

The 2007 Census of Agriculture shows that 71 percent of all farm operations gross less than \$25,000 per year. Therefore, these operations require smaller financial investments for initial start-up expenses such as hoop houses to extend the growing season, essential tools, irrigation, delivery vehicles, and annual expenses such as seed, fertilizer, utilities, land rents, marketing, and distribution expenses. These expenses are examples of the some of the operational needs that may be financed using the ML funds.

Minor improvements to farm real estate such as well drilling costs, modest shed and storage structures, and underground irrigation may also be financed using ML funds.

An ML is a type of OL with abbreviated streamlined application process and modified security and eligibility requirements. The major components of the proposed ML process are the application process and flexibility in meeting some of the eligibility and security requirements. These components have been specially designed to make the ML process appeal to small farm operations. The proposed ML application process simplifies the information required to apply by reducing the level of documentation required to more appropriately align with the less complex structure and needs of smaller operations. Additionally, the eligibility requirement for managerial ability, and the loan security requirements for an ML have been modified to be more appropriate for smaller family farms.

With the proposed ML application process, FSA can provide credit to these farmers with reasonable rates and terms. Applicants that otherwise may have chosen credit card financing in lieu of an FSA OL due to the application process or certain eligibility requirements may choose to seek assistance from FSA to start and continue their operations as a result of the simplified application process and eligibility and security requirements. Additionally, the flexibility FSA gives farmers to make loan payments when they sell their products allows them to more efficiently manage their income and resources. Participation in FSA's loan programs provides eligible farms advantages over credit card financing and this is significant because financing costs have a greater impact on smaller start-up operations, which typically have tighter cashflows. These benefits will help small operations progress through the start-up years, build

capacity, increase equity, expand their use of FSA's loan programs, and eventually graduate to commercial credit.

The ML application process would significantly streamline requirements compared to FSA's existing OL process. As a result, it would provide an option for farmers who may be intimidated by the documentation requirements that are often perceived as a deterrent to participation in FSA's loan programs. Additionally, FSA believes that the proposed ML application process would provide a financial bridge for many of its successful Youth Loan Program borrowers as they move toward more complex operations. Youth Loans are made to borrowers between the ages of 10 to 20 to finance income producing agriculture-related projects. The maximum amount of a youth loan is \$5,000. (See 7 CFR part 764, subpart H for a further description and explanation of the requirements for youth loans.) FSA also views the ML application process as a catalyst for other small farmers to move forward in their farming ventures.

FSA has the responsibility of providing credit counseling and supervision to its direct loan borrowers. While the ML requirements will reduce the burden on loan applicants, it will not reduce the level of counseling and supervision provided by FSA. In fact, the reduced documentation will allow FSA personnel to devote more time to loan analysis and to provide technical assistance to borrowers.

Though MLs are not limited to beginning farmers, they will benefit from the modified alternatives for meeting the managerial experience eligibility requirement by allowing applicants to gain experience while managing their own farm or through a past association with an agricultural-related organization. In the application, the applicant will provide a written description of their apprenticeship relationship (planned or

current), or will provide a written description of their past affiliations with an agriculture-related organization explaining how the experience will contribute to the success of managing their own farm operation.

Since the majority of small farms gross \$25,000 or less in farm sales, as discussed below, a maximum of \$35,000 for a ML should be ample for many beginning farmers starting out. As their financing needs expand, applicants can apply for an OL up to direct maximum loan amount of \$300,000 or obtain financing from a commercial lender under the Guaranteed Loan Program.

FSA performed a preliminary analysis of the proposed ML process and evaluated its potential to impact loan losses and program costs. Actual losses will ultimately depend on the demand by, and the risk profile of, the ML borrowers. These variables are currently unknown; however, historical borrower data on OL originations was used to approximate participation. Past demand for smaller OLs provides a baseline indication of potential ML demand. ML baseline demand and associated costs were forecast by varying the maximum ML amount from \$15,000 to \$35,000 and applying these criteria to historical OL data. In fiscal year 2011, FSA made 14,628 direct operating loans to 10,927 applicants. Slightly less than 31 percent of all these applicants received loans totaling less than \$35,000. This indicates the number of MLs made might be quite high, although the potential for increased losses could be minimized as these same applicants received just under 10 percent of the total dollar amount loaned under the direct OL Program, or \$103 million out of the \$1.037 billion loan portfolio. Because of expected similarities between the operations managed by ML applicants and Youth Loan applicants, such as new operations and operators, loan rates, small amounts of operating

expenses, and small loan volume compared to the regular OL Program, an assumption was made that ML borrowers will have the same risk profile as Youth Loan Program participants. Furthermore, exposure to losses would also be partially offset by administrative savings achieved as a result of reductions in workload during the application process.

To implement ML, FSA is proposing changes to the regulations and to the information collection requirements as discussed below. The changes to the regulations are discussed in the same order in which the regulations appear in the Code of Federal Regulations.

<HD1>Abbreviations and Definitions

Abbreviations and definitions used throughout FSA Farm Loan Programs (FLP) are in 7 CFR 761.2. This rule proposes to add abbreviations and definitions to that section that will be used for loans made through the ML application process. FSA is proposing to add an abbreviation for “microloan” and definitions for “microloan” and “apprentice.”

<HD1>Farm Assessment Requirements

Proposed farm assessment requirements for ML applicants will be significantly reduced. A farm assessment for FSA’s direct loan programs is a collaborative effort between FSA and the applicant and currently, it addresses the farm organization and key personnel qualifications, type of farming operation, goals for the operation, adequacy of real estate and chattel property to conduct the farming operation, historical performance,

farm operating plan, loan evaluation, supervisory plan, and training plan. The initial assessment under 7 CFR 761.103 is completed during the application process and is then updated annually with the borrower. As the ML application will require less information to be submitted by the applicant, the farm assessment will also be pared down to a level more proportional to the smaller operations being financed by ML funds. This is expected to benefit both the applicant and the loan staff in terms of time savings and speed of processing the application. The initial assessment for an ML applicant will be in the form of a narrative that will address the type of operation, assistance needed, goals of the operation, marketing plan, supervisory plan, financial viability of the plan, and training plan. These elements reflect the less complicated organizational structure and smaller farm asset base that we would expect to encounter with ML applicants. FSA will still conduct an annual review, but believes that these elements will better evaluate the probability of success for the small farm operations expected to be typical of ML applicants.

<HD1>ML Application Requirements and Application Processing

A complete ML application would consist of the following:

- An application form;
- A description of the applicant's farm training and experience;
- A balance sheet;
- An annual cash flow budget;
- Applicable environmental information;
- Verification of non-farm income relied upon for loan repayment;

- Past income, expenses, and yields for the most recent production cycle, to the extent practicable; and
- Credit report fee.

A new application form will be available for ML applicants. This form is intended to capture most of the information needed to process an ML, including sections for the applicant to describe their farm training and experience. It will also reduce and simplify the financial statement. For example, no itemization will be required for the ML cash flow budget, which differs from the more detailed farm operating plan and similar income and expense projections as required by the existing OL programs.

Environmental information will still be handled through the county office process, involving FSA staff and NRCS staff as applicable. This will not change from the current process followed for regular OLs.

Verification of non-farm income will only be required if that income is necessary for a feasible plan and sufficient cash flow for debt repayment. This is a change over the existing OL application process, as income is always verified as specified in 7 CFR 764.51(b)(8). If it is necessary to verify debt, debts will be verified through the credit bureau reporting system.

There also are proposed changes to the requirement for reporting of past yields as currently specified in 7 CFR 761.104. Applicants can provide other forms of documentation such as operator's sales receipts, financial statements, contracts, and tax returns. This change will be helpful for operations where past yields have little bearing on the projected plan, such as vegetable operators who plan short term and grow different crops to meet current demand, operators who produce crops using measures such as rows

or partial rows versus acres, or operators who grow crops that sell in volumes such as bunches. In some of these cases it will be impracticable, burdensome, and often irrelevant for the farmer to demonstrate accurate yields, especially if a variety of produce is harvested and then sold to the public only hours later. In such cases, past reliable history of income and expenses or cash receipts may be more useful in projecting the future production revenue of a field, greenhouse, or operation. Also, if an operator is changing crop from year to year to meet changing market demands, then production for the past 2 or 3 years may not be applicable to their production model. This modification allows FSA to assist operations that otherwise may have difficulty meeting or documenting production and yield history and will provide sufficient information for a loan official to determine eligibility and feasibility. FSA believes the lower loan limit will mitigate much of the risk of losses.

For incomplete applications, FSA proposes to follow existing direct loan processing procedures. Following current procedures, FSA will inform the applicant, through written correspondence, of any missing items needed to complete the application prior to established regulatory deadlines.

<HD1>Eligibility

Since MLs are OLs, applicants will be subject to existing OL eligibility requirements. However, FSA proposes to add flexibility in meeting the managerial ability requirement. Current regulations in 7 CFR 764.101(i) require that an OL applicant show managerial ability through the following:

- Has obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field;
- has on-the-job training, such as currently working on a farm as part of an apprenticeship program;
- has farming experience, such as be an owner, manager, or operator of a farm business for at least one entire production cycle; or
- have obtained and successfully repaid one FSA Youth-OL.

For ML applicants FSA proposes to add flexibility that will allow applicants to meet the eligibility requirement through either (1) a past association with an agriculture-related organization, such as 4-H Club or Future Farmers of America (FFA), that demonstrates experience in a related enterprise; or (2) by seeking, receiving, and applying guidance on how to manage their own start-up farm operation under an apprenticeship relationship. Only a written description of the current or future apprenticeship will be required in order to determine eligibility.

Meeting the managerial requirement through the agriculture-related organization experience will require the applicant to self certify on the application their involvement, detailing how that experience provides them with the ability to succeed with the operation they seek to finance with ML funds.

The apprenticeship relationship will allow an ML applicant to receive applied guidance and direction from an individual with the skills and knowledge pertinent to the successful operation of the farm enterprise being operated by the applicant. FSA expects that the applicant will consult with the mentor over the course of the production cycle (including issues of crop planning, purchasing from vendors, crop culture or animal

husbandry, pest and disease management, networking groups and associations, harvest, marketing, etc.) while operating their own farm and take the initiative to seek and apply advice as appropriate to their needs. Successful completion of the apprenticeship through the first operating cycle will be required as a condition of the loan. FSA loan officials will monitor the borrower's progress and work with the borrower to ensure successful completion of the apprenticeship program during the first operating cycle. If unforeseen circumstances prevent successful completion, FSA loan officials will provide additional guidance to assist the borrower in successfully completing the requirement.

This expansion of management ability offers the opportunity for ML borrowers to gain the minimum of 3 years farm and management experience needed as part of eligibility for FSA's Farm Ownership (FO) Program, a loan program for the purchase of farm real estate. For those applicants who were not raised in a farming background, or do not have the educational experience necessary to meet the farm managerial ability requirements, or do not have the opportunity to gain management experience while working for someone else's farm operation, the ML process can provide a path to eventual ownership of a family farm.

<HD1>Limitations

FSA is proposing that the ML application process can be used for an annual or term OL up to a maximum of \$35,000. ML applicants would be required to have an outstanding OL principal balance to FSA of no more than \$35,000 after the loan is closed. Since the gross value of farm production is usually less than \$25,000 for the majority of small income producing farming operations, financing needs for annual

production cost are expected to be below the \$35,000 maximum loan amount. FSA believes that this loan limit would provide sufficient levels of capital to small operations, which can include beginning farmers, truck farms, niche operations, CSA operations, and operations owned by immigrants who may need assistance establishing themselves in the farming community. Through this proposed rule, FSA is requesting comments on all aspects of the proposed ML process and is specifically interested in comments regarding the limitation of the loan amount.

<HD1>Security Requirements

FSA is proposing that MLs must be secured by collateral worth at least 100 percent of the loan amount. This differs from the current requirement in 7 CFR 764.104(c) that requires collateral worth at least 150 percent of the loan amount if available. Loans for improvements to farm real estate, such as well drilling, small barn or shed construction, or underground irrigation, may be secured by equipment, foundation livestock, or similar chattel security, if available, as an alternative to a lien on real estate, provided the 100 percent security requirement is met. A lien on real estate will only be required when other security is not available to meet the 100 percent security requirement. For an ML applicant, FSA can take a lien on equipment, or other available security, instead of taking a lien on real estate. Crops and livestock products will be taken as security for annual operating MLs only when other security available does not provide the minimum 100 percent security requirement. For example, when an ML is used to finance cash crops such vegetables that are marketed at a farmers market, or when produce is grown in measures such as rows, the applicant may choose to offer a tractor as

security instead of a lien on the crop. Some start-up or small family farms may not have sufficient equity in equipment or may be renting equipment and, therefore, a cash crop is all that is available to secure an annual ML. In this case, a lien on the crop produced with loan funds may provide security for the loan. FSA believes that flexibility in security requirements is another tool in meeting the needs of small family farms by providing affordable credit alternatives to credit card and high interest financing.

<HD1>Applicability of Other Regulatory Requirements

Other existing and applicable regulatory requirements pertaining to development of operating plans, loan processing and closing, use of loan funds, loan servicing, and environmental requirements not specifically amended by this proposed rule will apply to MLs, like other OLs.

<HD1>Lo-Doc OLs

The Lo-Doc OL application process is not widely used, for example only 3 percent of OLs obligated in FY 2010 were Loc-Doc loans. As a result of the Lo-Doc application process not being used, FSA has determined that a new program that changes not only the application process but also some eligibility and security requirements would be more appropriate rather than attempting to revise the Lo-Doc process. A large percentage of applicants that could have applied for a Lo-Doc OL will be able to apply for an ML. Therefore, FSA proposes to remove the Lo-Doc provisions from the Code of Federal Regulations. Removal of the Lo-Doc Program is not expected to have a significant impact on the public.

<HD1>Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this proposed rule.

<HD1>Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?

- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

<HD1>Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, FSA has not prepared a regulatory flexibility analysis.

The term small entities include small businesses, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of this rule on small entities, a small business will be as described in the Small Business Administration's Table of Small Business Size Standards by North American Industry Classification System (NAICS) Category (13 CFR 121.201). This includes the following categories and the relative size standards that will apply to the entities requesting

microloans. All of the entities that would request a microloan would be small businesses that produce crops and livestock in subsectors 111 and 112 listed under 13 CFR 121.201. These categories cover all primary agricultural production. Under the SBA Small Business Size Standard for these two NAICS subsector categories, the majority of businesses are considered small when they receive less than \$750 thousand in annual receipts, the threshold is higher for two subcategories of animal production. (See 13 CFR 121.201, subsectors 112112 and 112310.) This standard does not exclude any of the potential farm loan borrowers who will make use of the proposed modifications to the OL Program. Nevertheless, even if the applicants under the proposed ML Program were considered small entities, there would not be a substantial number affected by the rule.

Overall, this is a new application process and greater options for eligibility and security for small loans within the existing OL Program, so theoretically some of the loans could be made under the existing program. Therefore, small entities in two credit segments have to be considered for this analysis. One segment is the number of existing borrowers who might take advantage of the modifications in eligibility for future loans. The other segment is the number of new borrowers who might never have applied for an FSA operating loan without the modifications. The number of existing borrowers who might make use of the application, eligibility, and security modifications for future loans can be precisely estimated using fiscal year 2011 direct operating loan data. Given that the maximum borrowing limit is \$35,000 as proposed in the rule, it is estimated there would be at most 3,340 borrowers with \$102.7 million in loans in this segment. However since these are existing borrowers with the same credit needs, this segment will have no additional economic impact. Only the demand by additional borrowers will have an

incremental economic impact. This additional demand is more difficult to estimate. Preliminary estimates assume the new borrowers will be younger, below the age of 35, and have relatively low annual sales, less than \$10,000 annually. Using data from the 2007 Census of Agriculture, this segment of producers consists of about 14,434 primary operators. Historically FSA direct operating loans have captured only 2 percent of the agricultural credit market, so fewer than 300 borrowers will probably be added. Therefore, about 4,000 entities could be affected by this rule with an economic impact of only about \$10.5 million (300 new borrowers times \$35,000 in loans per borrower).

Furthermore, the minimal regulatory requirements will impact large and small businesses equally as part of the loan making process since MLs are distinguished based on the size of the loan. ML applicants will have a lower paperwork burden that will be commensurate with the smaller loan amount due to a reduction in documentation required for these loans. Therefore, in accordance with the Regulatory Flexibility Act, FSA is certifying that there would not be a significant economic impact on a substantial number of small entities. Due to the limited number of entities, the economic effects from any additional lending are unlikely to have a substantial impact on entities of any size.

<HD1>Environmental Review

The environmental impacts of this proposed rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR 799 and 7 CFR part 1940, subpart G). FSA concluded that simplifying the application process and

adding flexibility for meeting loan eligibility and security requirements to encourage small farm operation participation in its OL program explained in this proposed rule are administrative in nature and will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective applicant will not change from the current process followed for all FLP actions (7 CFR 1940.309). Therefore, FSA will not prepare an environmental impact statement on this proposed rule.

<HD1>Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

<HD1>Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with

such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

<HD1>Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule would not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

<HD1>Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” The Executive Order imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not, to our knowledge, preempt Tribal law.

As part of an ongoing collaboration, FSA provided government-to-government consultation with Tribal governments to discuss this proposed rule. In February, 2012, the Farm Service Agency (FSA) held three teleconference sessions for all federally recognized Tribal governments. The teleconference session was also offered to intertribal organizations, and individual Native Americans and Alaska Natives. The purpose of these teleconferences was to present information about important program

changes and the new Microloan Program. FSA also provided an overview of the subjects to be discussed with the invitation letter prior to the teleconferences. These Tribal Consultation conversations and presentations were held to help guide USDA in understanding any challenges that may be associated with the implementation of the new Microloan program among Tribal communities and within Tribal governments. A question and answer period was held immediately following each topic presentation by the FSA Administrator and staff from FSA's Farm Loan Programs. This proposed rule incorporates the information FSA received during these Tribal Consultations. In addition, comments from the general public are being requested on this proposed rule for 60 days following its publication in the Federal Register and FSA encourages individual Native Americans and Alaska Natives, Tribal governments, and intertribal organizations to provide additional comments during this comment period.

FSA will continue to respond in a timely and meaningful manner to all Tribal government requests for Tribal consultation about this rule and its implementation and will provide additional avenues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives about ways to improve this program and rule in Indian Country.

<HD1>Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports the new ML program is being submitted to OMB. FSA is requesting comments from interested individuals and organizations on the information collection activities related to the ML application process as described in this

proposed rule. FSA is currently modifying the loan application process in order to provide loans to eligible borrowers through the ML process.

This information collection request will be incorporated into FSA's approved information collection of the same title and OMB control number 0560-0237.

Title: Direct Loan Making.

OMB Control Number: 0560-New.

Type of Request: New Collection.

Abstract: This information collection is required to support the regulation changes in 7 CFR 764, "Direct Loan Making," which establishes the requirements for most of FSA's direct loan programs including the new ML application process. The information collection established in this proposed rule is necessary for FSA to evaluate the applicant's request and determine if eligibility, loan repayment, and security requirements can be met.

Estimate of Burden: Public reporting for this collection of information is estimated to average 4.27 hours.

Type of Respondents: Individuals or households, businesses or other for profit, and farms.

Estimated Number of Respondents: 5,142.

Estimated Average Number of Responses per Respondent: 5.71.

Estimated Total Annual Number of Responses: 29,372.

Estimated Total Annual Burden on Respondents: 21,938 hours.

We are requesting comments on all aspects of this information collection and to help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

<HD1>

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

<LSTSUB><HED>List of Subjects

<CFR>7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

<CFR>7 CFR Part 764

Agriculture, Disaster assistance, Loan programs-agriculture.</LSTSUB>

For reasons discussed above, FSA proposes to amend 7 CFR chapter VII as follows:

<PART><HED>PART 761 – FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

<AUTH><HED>Authority: <P> 5 U.S.C. 301 and 7 U.S.C. 1989.

2. Amend § 761.2 as follows:

a. In paragraph (a), remove the abbreviation “Lo-Doc” and add an abbreviation, in alphabetical order, for “ML Microloan”;

b. In paragraph (b), add definitions, in alphabetical order, for “Apprentice” and “Microloan”; and

c. In paragraph (b), remove the definition of “Low-Documentation Operating loan.”

The additions read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(a) * * *

ML Microloan.

* * * * *

(b) * * *

Apprentice means an individual who receives applied guidance and input from an individual with the skills and knowledge pertinent to the successful operation of the farm enterprise being financed.

* * * * *

Microloan is a type of OL of \$35,000 or less made under reduced application, eligibility and security requirements.

* * * *

3. Amend § 761.103 as follows:

- a. Revise paragraph (b), introductory text;
- b. Redesignate paragraphs (c) through (e) as paragraphs (d) through (f); and
- c. Add paragraph (c).

The revision and addition read as follows:

§ 761.103 Farm assessment.

* * * *

(b) Except for ML, the initial assessment must evaluate, at a minimum, the:

* * *

(c) For ML, the Agency will complete a narrative that will evaluate, at a minimum, the:

- (1) Type of farming operation and adequacy of resources;
- (2) Amount of assistance necessary to cover expenses to carry out the proposed farming plan, including building an adequate equity base;
- (3) The goals of the operation;
- (4) The financial viability of the plan, including a marketing plan and available production history, as applicable;
- (5) Supervisory plan; and
- (6) Training plan.

* * * *

4. Amend § 761.104 by redesignating paragraphs (e) and (f) as (f) and (g), and adding paragraph (e) to read as follows:

§ 761.104 Developing the farm operating plan.

* * * * *

(e) For MLs, when projected yields and unit prices cannot be determined as set forth in paragraphs (c) and (d) of this section because the data is not available or practicable, documentation from other reliable sources may be used.

* * * * *

<PART><HED>PART 764 – DIRECT LOAN MAKING

4. The authority citation for part 764 continues to read as follows:

<AUTH><HED>Authority: <P> 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 764.1 [Amended]

5. Amend § 764.1 paragraph (b)(2) by adding the words “ML and” immediate following the word “including”.

6. Revise § 764.51 paragraph (c) to read as follows:

§ 764.51 Loan application.

* * * * *

(c) For an ML request, all of the following criteria must be met:

(1) The loan requested is:

(i) To pay annual or term operating expenses, and

(ii) \$35,000 or less and the applicant’s total outstanding Agency OL debt at the time of loan closing will be \$35,000 or less;

(2) The applicant must submit the following:

- (i) Items (1), (2), (3), (6), (7), (9), and (11) of paragraph (b) of this section;
 - (ii) Financial and production records for the most recent production cycle, if available, and practicable to project the cash flow of the operating cycle, and
 - (iv) Verification of all non-farm income relied upon for repayment; and
- (3) The Agency may require an ML applicant to submit any other information listed in paragraph (b) of this section upon request when specifically needed to make a determination on the loan application.

* * * * *

7. Amend § 764.101 as follows:

- a. In paragraph (i)(3) at the end of the first sentence add the text “or the applicant may have obtained and successfully repaid one FSA Youth-OL”; and
- b. Add paragraph (i)(4).

The addition reads as follows:

§ 764.101 General eligibility requirements.

* * * * *

(i) * * *

- (4) Alternatives for ML. ML applicants also may demonstrate managerial ability by one of the following:

- (i) Certification of a past association with an agriculture-related organization, such as 4-H Club or FFA, that demonstrates experience in a related enterprise; or
- (ii) A written description of a self directed apprenticeship for the first operating cycle. The applicant will agree as a condition of the loan to seek, receive, and apply guidance, during the first production cycle of production and marketing typical to the

applicant's specific operation, with an individual who is knowledgeable of production and marketing practices that are pertinent to the applicant's operation and will provide a developmental partnership to share knowledge, skills, information, and perspective of agriculture to foster professional growth. The intent of this apprenticeship is to provide the applicant with the skills and knowledge necessary to manage their operation on their own. They may continue the apprenticeship beyond the first operating cycle, but they are not required to do so.

§ 764.103 [Amended]

8. Amend § 764.103 as follows:

a. Amend paragraph (c), by adding "ML" after the words "downpayment loans";

and

b. Amend the last sentence of paragraph (e) by removing the words "conservation loans" and adding, in their place, the words "CL, ML".

9. Amend § 764.251 as follows:

a. Revise paragraph (a), introductory text; and

b. Revise paragraph (b).

The revisions read as follows:

§ 764.251 Operating loan uses.

(a) OL funds may only be used for:

* * * * *

(b) ML funds may be used for any OL purpose.

10. Amend § 764.255 as follows:

a. Revise paragraph (b), introductory text; and

b. Add paragraph (c).

The revision and addition read as follows:

§ 764.255 Security requirements.

* * * * *

(b) Except for MLs, by a:

* * *

(c) For MLs:

(1) All loans must be secured by assets having a security value of at least 100 percent of the loan amount.

(2) A lien is required on foundation livestock or equipment purchased with term ML funds.

(3) Improvements to farm real estate (such as, well drilling, small barn, storage sheds, or underground irrigation) may be secured by equipment, foundation livestock, or similar chattel security if available and adequate to meet the 100 percent security requirement. A lien on real estate will only be taken if other security is not available to adequately meet 100 percent security requirement.

(4) Crops and livestock products may be taken as security for annual operating MLs only when other available security does not meet the 100 percent security requirement.

<SIG><DATED>Signed on April 27, 2012.

<NAME>Bruce Nelson,
<TITLE>Administrator,
Farm Service Agency.</SIG>

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